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TAGS: [ECON](#) [EINV](#) [EFIN](#) [RS](#)
SUBJECT: RUSSIA: BANK OF NEW YORK OFFICIALS ON NEW LAWSUIT

Classified By: ECMIN Quanrud for reasons 1.5 b and d.

¶1. (C) Bank of New York (BONY) officials confirmed in a meeting with the Embassy on May 24 their understanding that the Moscow Arbitration Court has accepted a case against the company, reportedly filed by the Russian Customs Service. On May 16, A U.S.-based lawyer claiming to act on behalf of the Russia's Customs Service announced that he a filed suit asking for USD 22.5 billion in damages in connection with money laundering charges brought against BONY in the late 1990s. BONY has not yet received a copy of the case, and will await receipt of the complaint to determine next course of action. The company is not seeking USG assistance at this time. BONY officials speculate that the suit appears linked to the proposed merger between BONY and Mellon Bank, and may be part of a subterfuge to hide insider trading and attempts at market manipulation. End Summary.

The Case

¶2. (SBU) The complaint is based, per press reports, on a criminal investigation in the United States that dates back to the 1990s. BONY officials were found to have laundered money, allegedly coming from Russian importers attempting to avoid taxes and customs duties. BONY fired three branch managers, and paid out an estimated USD 26 million to the U.S. government in fines and damages, and another USD 12 million to banks that lost money because of the transactions. The settlements were paid out in November 2005.

¶3. (SBU) BONY officials told us May 24 that they had received confirmation that Moscow Arbitration Court has accepted the complaint. The Bank has not yet seen the complaint, but is making arrangements to obtain a copy from the court.
(Comment: It is common for the charges to be sent by post, which can take several weeks. End Comment.)

An Odd Approach by a Miami Firm

¶4. (C) According to BONY, about a year ago lawyers from the Miami-based law firm of Podhurst Oreck, which claimed to be representing the Russian customs service, approached the bank and said it planned to file suit for a claim of USD 7 billion related to the 1999 money-laundering case. However, if BONY would pay USD 600,000, the case would be settled without going to the court - and that such a payment would keep "BONY from having regulatory trouble." BONY refused to pay,

perceiving this as a case of extortion. To Bank officials, the timing of this approach did not seem coincidental since it was at the moment when BONY engaged in merger talks. The company did not hear any more until press reports of the case filed on May 16.

Market tampering?

15. (C) BONY officials are suspicious about the timing of the lawsuit's announcement -- on the eve of BONY shareholder discussions about the proposed BONY-Mellon Bank merger, and speculate it was timed to affect market shares. BONY officials said there were serious stock market fluctuations for both banks when the suit was announced; the two banks' trading spreads, which had been in sync since December, split, and trading volumes were up by four times average, activity that is sure to have caught the eye of the SEC and NYSE. BONY is also curious why, if the Customs Service was so intent with its lawsuit, no representative from the Customs Committee attended the press conference announcing the lawsuit (and they were no-shows given that nameplates of Customs officials had been placed on the dais) and why Customs has been mute on the suit. Moreover, the Customs Service, according to BONY, does not have the authority to bring such a suit under Russian law -- that right rests with the Finance Ministry, as a revenue flow is involved.

Bank's Market Presence

16. (SBU) BONY has only a representative office in Russia, with no full-time American staff. Despite its low-profile (understandable in the wake of the scandal and trial in the U.S.), it is still the depository agent for Gazprom, VTB and many other prominent Russian companies. This fact, plus private assurances from the Finance Ministry (the nominal Ministry that would bring such a suit) that it had no hand in this, have led BONY to the conclusion at this point that this may be a renegade operation by an opportunistic trial lawyer.

Next Steps

17. (C) The company is in the process of hiring local legal counsel, and will await a copy of the charges to determine appropriate next steps. It has no plans to make further public statements and is not seeking USG assistance at this time.

BURNS